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<p>1 facility here in January of 1983?</p> <p>2 A Yes, sir.</p> <p>3 Q And who was Jack Wolter?</p> <p>4 A He was Mr. McCaig's boss in Cambridge.</p> <p>5 Q And do you remember a man named James Gidley?</p> <p>6 A Yes, sir.</p> <p>7 Q When he retired from W.R. Grace, was he disabled from asbestos?</p> <p>8 A I don't remember the exact cause or his purpose of retirement. I know that he had respiratory problems, but he was also severely crippled up with arthritis.</p> <p>9 Q Did he ultimately die at the age of 61?</p> <p>10 A Well, he ultimately died. I don't remember his age.</p> <p>11 MR. GRAHAM: Objection.</p> <p>12 BY MR. LEWIS:</p> <p>13 Q Did you folks at W.R. Grace do anything to try to keep the public from learning about the cause of his death as pulmonary problems associated with his work at W.R. Grace?</p> <p>14 MR. GRAHAM: Objection, relevancy, Your Honor. As I understand it we're talking about 1983, which is after all of this transpired.</p>	<p>1 more foundational questions.</p> <p>2 A (Deponent complied.)</p> <p>3 Q Do you recall that letter now?</p> <p>4 A Yes, sir, I believe I do.</p> <p>5 Q Was this letter prepared in the ordinary and usual course of business of W.R. Grace?</p> <p>6 A Yes, sir, I would say so.</p> <p>7 Q And does it appear to be authentic in every respect?</p> <p>8 A Yes, sir.</p> <p>9 MR. LEWIS: I would offer Plaintiffs' Exhibit ZZ.</p> <p>10 MR. GRAHAM: I would renew the objection, Your Honor.</p> <p>11 THE COURT: Objection is overruled.</p> <p>12 It may be admitted.</p> <p>13 BY MR. LEWIS:</p> <p>14 Q This letter states that after Mr. Gidley's death, his wife applied for death benefits; is that correct?</p> <p>15 A Apparently so, yes, sir.</p> <p>16 Q And it says that Jim was well known, well liked and a model employee, correct?</p> <p>17 A Yes, sir.</p> <p>18 Q And it says that no claim was filed, by</p>
<p>1 THE COURT: Sustained.</p> <p>2 MR. LEWIS: May we approach the bench?</p> <p>3 (A discussion was held off the record.)</p> <p>4 MR. LEWIS: Would you mark that ZZ.</p> <p>5 THE COURT: What number? ZZ.</p> <p>6 BY MR. LEWIS:</p> <p>7 Q When did Mr. Gidley retire?</p> <p>8 A I don't remember.</p> <p>9 Q Did he retire in January of 1978?</p> <p>10 A I previously said I don't remember.</p> <p>11 Q I'm going to hand you what has been marked as Plaintiffs' Exhibit ZZ. Would you look at that exhibit and see if that refreshes your recollection as to when James Gidley retired.</p> <p>12 A Well, it states here he retired on January 31st, 1978.</p> <p>13 Q Was that a time during which Dan Schnetter was employed at W.R. Grace?</p> <p>14 A Yes, sir.</p> <p>15 Q And then did you get a copy of this letter?</p> <p>16 A It states that I did.</p> <p>17 Q Would you read that whole letter over to yourself and then I would like to ask you a couple</p>	<p>1 your company, I assume?</p> <p>2 A I assume by his widow.</p> <p>3 Q Well, this is something that confuses me here, and you maybe can straighten this out.</p> <p>4 "No claim was filed because of our practice/advice (See September 20, 1982, letter Harry Eschenbach to J.P. Cahalane), not because his lung problems had not been identified or understood."</p> <p>5 Now, when you were on notice of a disease -- a lung disease, was it ordinarily your practice to file some kind of report with some governmental entities to confirm that you knew about that?</p> <p>6 A It was our practice ordinarily to file a claim on behalf of that employee.</p> <p>7 Q That's exactly the point I'm making.</p> <p>8 Ordinarily you would have filed a claim, right, but for some reason you were told not to file a claim by Mr. Eschenbach in some kind of a September 20, 1982, letter. Do you recall that?</p> <p>9 A No, sir, I don't, but that's what it states there.</p> <p>10 Q And even where the lung problems were legitimate, as you knew they were in this case, no claim was initiated by your company, correct?</p>

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1 A That's what it states, yes, sir. 2 Q Now, it says in this last paragraph, "This 3 claim is well justified (other than lack of timely 4 filing) as others which are being paid. We feel 5 some settlement with Mrs. Gidley should be 6 negotiated. Our image with our employees and with 7 the community would suffer irreparable damage should 8 this situation become public knowledge." 9 Now, do you -- When you got that letter, 10 did you feel that that was appropriate to try to 11 keep that out of the public eye? 12 A Well, I think it was appropriate that the 13 company should have filed a claim and asked that 14 that claim be honored. 15 Q And do you think, though, that the public 16 and the employees had a right to know about the 17 danger that was occurring up there? 18 MR. GRAHAM: I would object to the 19 form of the question. It misinterprets the 20 document. 21 MR. LEWIS: I'm not referring to the 22 document, Your Honor. 23 THE COURT: He just asked his 24 opinion. 25 MR. GRAHAM: If it's not with regard	1 reason I would have felt that way. 2 Q Well, the question I have is, was it 3 management policy to try to keep the asbestos 4 hazards at your mill away from the public eye? 5 A No, sir, I don't believe it was. 6 Q Did you ever tell the employees about the 7 nature and extent of Mr. Gidley's disease and 8 death? 9 A I don't remember ever doing it, no, sir. 10 Q And when this came up, it was after he had 11 left the company for three years, correct? 12 A Yes, sir. 13 Q So he died about three years afterward, 14 and -- So whatever Mr. McCaig did, you don't think 15 that that was -- keeping out of the public eye was 16 consistent with the public policy; is that your 17 testimony? 18 A That was Mr. McCaig's judgment. I don't 19 know that that was public policy. It was certainly 20 his judgment to feel that way. 21 Q And that letter went to Mr. Jack Wolter? 22 A Yes, sir. 23 Q Where is he located? 24 A Cambridge. 25 Q Let's set that exhibit right here, because
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1 to the document, I don't have any objection, Your 2 Honor. 3 THE COURT: I think he just asked 4 him, do you think it's fair, or something like 5 that. Okay. You withdraw your objection? 6 MR. GRAHAM: Yes, as long as he's not 7 referring to the document. 8 THE WITNESS: Is your question -- 9 BY MR. LEWIS: 10 Q I'll rephrase the question, sir. 11 A Thank you. 12 Q I can see I've caused some confusion 13 here. Did you ever talk to Mr. McCaig about that 14 letter? 15 A I don't recall that I did, but I just 16 don't remember. 17 Q Did it appear to you -- Was it your 18 impression from reading that letter that it was 19 important to the company for this information 20 concerning Mr. Gidley's lung disease not be made 21 public? 22 A Well, I would -- It would be my opinion 23 that the claim should have been -- could have 24 been -- should have been filed and should have been 25 paid, but I don't know that that's the primary	1 I have more questions on a different subject a 2 little bit later. 3 MR. LEWIS: Could I have Exhibits 24 4 and 25. Thank you very much. 5 BY MR. LEWIS: 6 Q I'm handing you what has been marked as 7 Plaintiffs' Exhibit G-24 and 25. And would you 8 review those and advise us as to whether you're 9 familiar with either or both of those documents. 10 A I have seen both of these documents 11 before, and it was not about the time that they -- 12 that they were written. It was sometime afterward. 13 Q Okay. I think that's important to 14 establish -- And I'll give you an opportunity to 15 explain. Let me ask you a few foundational 16 questions and I'll let you explain that. These 17 documents are W.R. Grace documents; is that 18 correct? 19 A Yes, sir. 20 Q The first one, G-24 is on the letterhead 21 called Cambridge, correct? 22 A Yes, sir. 23 Q Does that refer to Cambridge, 24 Massachusetts? 25 A Yes, sir.

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<p>1 Q It's from Peter Kostic to John F. Murphy;</p> <p>2 is that correct?</p> <p>3 A Yes, sir.</p> <p>4 Q From my copy I can't read the date. Can</p> <p>5 you read the date?</p> <p>6 A March 29th, 1966.</p> <p>7 Q And what is the subject of this document?</p> <p>8 A Zonolite Dust Conditions.</p> <p>9 Q And Mr. Murphy, what was his position with</p> <p>10 the company?</p> <p>11 A There are two John F. Murphy's, as you</p> <p>12 will notice on this letter. I believe the John F.</p> <p>13 Murphy at the top was chief engineer of the</p> <p>14 Zonolite -- of Construction Products Division at</p> <p>15 that time, and I believe J.F. Murphy, Junior, was</p> <p>16 vice president of finance of Construction Finance</p> <p>17 Division.</p> <p>18 Q Was that his son?</p> <p>19 A No, sir.</p> <p>20 Q No relation?</p> <p>21 A No relation.</p> <p>22 Q Who was J.D. Kingery?</p> <p>23 A He was a Grace official in New York.</p> <p>24 Q Now this document here, G-24, the</p> <p>25 Cambridge document dated March 29, 1966, was</p>	<p>1 correct?</p> <p>2 A I would think so, yes, sir.</p> <p>3 Q And you have indicated you knew all -- you</p> <p>4 knew all of the gentlemen that are referenced in</p> <p>5 this report, correct?</p> <p>6 A I don't know Mr. Kingery.</p> <p>7 Q But you know Mr. Kingery is an official</p> <p>8 with W.R. Grace?</p> <p>9 A Yes.</p> <p>10 Q You recognize this as a document that</p> <p>11 Mr. Kostic prepared and you saw it before, you</p> <p>12 indicated, in fairness to you, that you may have</p> <p>13 seen it later than March 30, 1966; is that correct?</p> <p>14 A Much later.</p> <p>15 Q When did you first see it?</p> <p>16 A I don't really know. It has been --</p> <p>17 Q Would it have been after you retired?</p> <p>18 A I think so, yes, sir.</p> <p>19 Q That's important. You believe you did not</p> <p>20 see this yourself until after you retired?</p> <p>21 A I don't believe so, no, sir.</p> <p>22 Q Did you see this for the first time in the</p> <p>23 course of litigation?</p> <p>24 A I think so, yes, sir.</p> <p>25 Q And it's not copied to you?</p>
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<p>1 prepared by Mr. Kostic you said, and his position</p> <p>2 was head of safety or something like that?</p> <p>3 A He was a safety engineer in Cambridge.</p> <p>4 Q He basically, in this G-24 -- Exhibit G-24</p> <p>5 summarizes the problems at least -- at least some of</p> <p>6 your problems in Libby; is that correct?</p> <p>7 A That's the way it appears.</p> <p>8 Q He has got things set out by date</p> <p>9 beginning January 23, 1959, and he goes through a</p> <p>10 number of statements ending on February 16 --</p> <p>11 February 15, 1966; is that correct?</p> <p>12 A Yes, sir.</p> <p>13 Q And without going through all of that, the</p> <p>14 last two paragraphs in the body on page -- on the</p> <p>15 fifth page say -- Let me offer this first.</p> <p>16 MR. LEWIS: I would offer Plaintiffs'</p> <p>17 Exhibit G-24 as a document generated by the</p> <p>18 management of W.R. Grace.</p> <p>19 MR. GRAHAM: Objection, competency.</p> <p>20 Doesn't fall within the hearsay exception.</p> <p>21 THE COURT: Objection is overruled.</p> <p>22 BY MR. LEWIS:</p> <p>23 Q Just to make the record very clear, this</p> <p>24 document was prepared in the ordinary and usual</p> <p>25 course of the business of W.R. Grace; is that</p>	<p>1 A No, sir.</p> <p>2 Q Okay. Kostic is a high company official</p> <p>3 concerning safety, however; is that true?</p> <p>4 A Well, I don't know that he would fall</p> <p>5 within the category of a high public official.</p> <p>6 Q Not public; company, I said.</p> <p>7 A Excuse me, high company official. He was</p> <p>8 the safety engineer in Construction Products</p> <p>9 Division. He wasn't head of the division.</p> <p>10 Q All right. That's helpful. But as far as</p> <p>11 the Construction Products Division, which was what</p> <p>12 your mill was part of, he was the chief safety</p> <p>13 engineer; is that correct?</p> <p>14 A Well, he is the one that we saw here the</p> <p>15 most often.</p> <p>16 Q Okay. Was there any other safety engineer</p> <p>17 with the company that came out here?</p> <p>18 A Yes, I believe he had another one that</p> <p>19 came out a time or two, but I don't recall his</p> <p>20 name.</p> <p>21 Q In any event, he said -- In that --</p> <p>22 "Regarding the elaborate studies and tests</p> <p>23 recommended by Dr. Spicer, I feel that they would be</p> <p>24 of greater value to the medical and health</p> <p>25 professions than to us. The fact that employees had</p>

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1 contracted lung conditions is not as important now
 2 as determining if there is a health exposure (by
 3 scheduled air samplings and analysis) and applying
 4 proper controls."

5 When you saw this, finally, did you
 6 understand what he meant by that?

7 A When I saw this, sir, I'm not sure that I
 8 even read it. I just said that I saw it.

9 Q Then the last paragraph he says, in the
 10 body, "I agree with L. Park of Maryland Casualty in
 11 that respirators should not be considered a
 12 substitute for proper engineering controls.
 13 Respirators are fine for short periods of time, but
 14 to get a man to wear one eight hours a day is next
 15 to impossible." Do you agree with that statement?

16 A Yes, sir.

17 Q You see the summary of things that Kostic
 18 recommends to attack this problem?

19 A Yes.

20 Q There are four things, right?

21 A Yes.

22 Q But it doesn't include any recommendation
 23 that the men be warned about this hazard, does it?

24 A Well, I still haven't read this.

25 Q Why don't you read those last four to

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1 Q Did you see this at or near the time that
 2 it purports to have been mailed?
 3 A No, sir, I don't believe I did.
 4 Q Okay. Do you have any doubt that
 5 Mr. Bleich received it?

6 A No, sir.

7 Q In fact it's got numbers stamped on it
 8 indicating that it's -- it was probably -- it was a
 9 W.R. Grace document, right?

10 A It has numbers stamped on it.

11 Q Do you know how the litigation support
 12 team back there in Boston numbers their records?

13 A No, sir, I do not.

14 Q Haven't been consulted on that?

15 A No, sir.

16 Q But you have no doubt that this was
 17 received by Mr. Bleich, do you?

18 A No, sir.

19 MR. LEWIS: I'll offer Plaintiffs'
 20 Exhibit G-25.

21 MR. GRAHAM: Object, hearsay.

22 THE COURT: Pardon, counsel?

23 MR. GRAHAM: Object, hearsay, Your
 24 Honor.

25 THE COURT: Overruled. It may be

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1 yourself.

2 A (Pause.) Yes, sir, I've read them.

3 Q That does not recommend that a full
 4 disclosure be made to the men, correct?

5 A It does not, no, sir.

6 Q And it does not recommend a full
 7 disclosure be made to the public, correct?

8 A It does not, no, sir.

9 Q And in fact it doesn't even recommend that
 10 a full disclosure be made to the management on the
 11 ground here in Libby; is that correct?

12 A It does not, no, sir.

13 Q Now going to G-25, which you have in front
 14 of you. This is another W.R. Grace document.

15 Actually it's not a W.R. Grace document. This is an
 16 office memorandum from the Montana State Board of
 17 Health dated March 31, 1966, to Mr. Bleich; is that
 18 correct?

19 A Yes, sir.

20 Q And who originated this short memorandum?

21 A Benjamin F. Wake.

22 Q This would have been found in the -- in
 23 the documents, the records of W.R. Grace; is that
 24 correct?

25 A Probably, yes, sir.

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1 entered.

2 BY MR. LEWIS:

3 Q Now, attached to this little short
 4 memorandum from Mr. Benjamin Wake from the State of
 5 Montana is an excerpt advising as to the dangers of
 6 asbestos being documented by a doctor named Irving
 7 Selikoff; is that correct?

8 A Yes, sir.

9 Q And it also advises that an asbestos
 10 cancer link is being studied; is that correct?

11 A Yes, sir, it appears to say that.

12 Q And it documents the fact that, "They
 13 found six to seven times the 'expected' rate of
 14 cancer of the lung. And they also found that
 15 mesothelioma, a form of cancer ordinarily so rare
 16 that it's not separately coded among causes of
 17 death, was found to have 'extraordinarily' high
 18 incidence among asbestos workers." Is that
 19 correct?

20 A It states that, yes, sir.

21 Q That would have been received by
 22 Mr. Bleich in 1966, but did you not -- he did not
 23 share that with you, that's your feeling?

24 A Not that I recall, no, sir.

25 Q You remember I asked you early on whether

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1 you received information concerning the link between
 2 asbestos and mesothelioma before Mr. Schnetter was
 3 hired and you said you did not. Does this explain
 4 why you didn't, because you never saw this? You
 5 didn't see this document before you retired?

6 A No, sir, I don't believe so.

7 Q But your boss did, right?

8 A Yes, sir.

9 Q Do you know of anything he did to bring
 10 that to the attention to the workers?

11 A No, sir.

12 Q Now, there is something that -- I
 13 shouldn't say that. I'm just going to ask you this
 14 question. You knew by now at least, 1966, that men
 15 were being diseased up there, right?

16 A Yes, sir.

17 Q You had men who had been diagnosed with
 18 serious lung problems by that time, correct?

19 A Yes, sir.

20 Q Mr. Gidley, had he died yet? Not yet.
 21 He was still working up there, though. Right?

22 A Yes.

23 Q And he had been diagnosed as having
 24 disease already by that time?

25 A Apparently, yes.

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1 MR. GRAHAM: Objection, foundation.
 2 THE COURT: Sustained.

3 BY MR. LEWIS:

4 Q You had absolute proof that these men had
 5 been diseased up there at the mill by 1966 at the
 6 latest; is that true?

7 A Yes, sir, that would be true.

8 Q And you have told us that none of the
 9 records you had on that were shared with the men; is
 10 that true? That's what you told us, correct?

11 A Yes, sir.

12 Q And so at this point it wasn't just a
 13 matter of men being exposed to something that might
 14 injure or kill them, these men were already injured
 15 and dying, and they were continuing to be exposed
 16 every day; is that true?

17 MR. GRAHAM: I would object again.
 18 Foundation and relevancy, Your Honor, at this point
 19 in time. Not a medical witness.

20 THE COURT: Are you asking questions
 21 in regard to the exhibit?

22 MR. LEWIS: No, I'm asking him of his
 23 own knowledge, what he knew. He was the man who did
 24 all the -- got all the information together, looked
 25 at all the death certificates.

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1 Q And many others had been diagnosed having
 2 disease at that time, right?

3 A Yes, sir.

4 Q And they were -- You were allowing them to
 5 continue to work up there, right?

6 A Yes, sir.

7 Q Did you ever look at the fact that men who
 8 were already diseased were being harmed every day
 9 that they continued to work up there in that mill?

10 Did you ever consider that?

11 A I don't know that we would have thought of
 12 it in that way, no, sir.

13 Q Well, think of it -- The question is
 14 this. With respect to those men that were already
 15 diseased, you not only knew that there was a chance
 16 that they were being -- they might be harmed, you
 17 knew that they were in fact being harmed with every
 18 breath; is that true?

19 A Well, we certainly would have realized
 20 that there is a chance that they were being harmed
 21 continuously, yes, sir.

22 Q But there was no doubt as to those men who
 23 were already diseased, they were being harmed. You
 24 had absolute proof of that in your confidential
 25 records; is that right?

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1 BY MR. LEWIS:

2 Q Is that true, sir?

3 A Yes, sir. But I would like to point out
 4 that this is some time after that.

5 Q But you knew that the men were already
 6 diseased then, right?

7 A Some of them, yes, sir.

8 Q Well, at least by the time Dan Schnetter
 9 was hired in 1973, you knew that men were diseased
 10 then, didn't you?

11 A Yes, sir.

12 Q And you knew that men had already died
 13 then, right?

14 A Yes, sir.

15 MR. GRAHAM: Objection. Your Honor,
 16 this is repetitive. These have all been asked and
 17 answered on a number of different occasions.

18 THE COURT: I'm going to sustain
 19 that. You have gone over this, and unless you have
 20 something different, Counsel, that is repetitious.

21 BY MR. LEWIS:

22 Q Well, the -- I won't argue with the
 23 Court. I'll get on to something else. Did you make
 24 any effort to assign those men who were diseased to
 25 jobs that did not result in as much exposure to

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1 asbestos?
 2 A We did not have the authority to do that.
 3 Q So if a man was diseased already and he
 4 was a sweeper, he went right back into the old mill;
 5 is that right?
 6 A He continued to work as a sweeper, yes,
 7 sir.
 8 Q Because that was his job, right?
 9 A Yes, sir. We did not have the authority
 10 to reassign him to another job.
 11 Q You certainly had the authority to tell
 12 him that if he continued to breathe abnormally
 13 dangerous asbestos fibers, it might kill him,
 14 though, right?
 15 MR. GRAHAM: Argumentative, Your
 16 Honor.
 17 THE COURT: Overruled. He may
 18 answer.
 19 THE WITNESS: Well, in the course
 20 of -- in the course of their employment, when they
 21 took the chest x-rays and the spirometer tests,
 22 those things would be pointed out to them. If --
 23 MR. LEWIS: You didn't --
 24 MR. GRAHAM: Wait.
 25 MR. LEWIS: I'm sorry.

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1 MR. GRAHAM: Go ahead.
 2 MR. LEWIS: That is a non-responsive
 3 answer, though, Your Honor.
 4 THE COURT: Let him finish the
 5 question and then we will deal with the -- whether
 6 it's responsive or not. You may respond,
 7 Mr. Lovick.
 8 THE WITNESS: In the course of the
 9 review of the chest x-rays and the spirometer tests
 10 that were given to them, these things would be
 11 pointed out to them and so that they would be --
 12 they would be informed. These people would also see
 13 probably some of their friends and neighbors whose
 14 conditions continued to increase. They would be
 15 aware that these things could happen.
 16 BY MR. LEWIS:
 17 Q Yes, but did you give the spirometry
 18 tests?
 19 A I'm one of them that gave spirometry
 20 tests, yes, sir.
 21 Q When did do you that?
 22 A I don't really remember when we started.
 23 Q When did you last give spirometry tests?
 24 A I don't remember that, either.
 25 Q You don't remember ever giving a

1 spirometry test to Dan Schnetter, do you?
 2 A Yes, sir, I've seen evidence that I gave
 3 one to Dan Schnetter.
 4 Q That you gave one to Dan Schnetter?
 5 A Yes, sir.
 6 Q When was that?
 7 A I don't remember the date.
 8 Q Was his spirometry test completely
 9 normal?
 10 A I don't remember for sure. I believe that
 11 it was, though.
 12 Q So you would have no reason to warn Dan
 13 Schnetter at that time of the spirometry test?
 14 A If his test was normal, I would not have.
 15 Q Let's get back to the question -- the
 16 inquiry I'm trying to get at here. W.R. Grace had
 17 no program to protect diseased men from additional
 18 harm; is that correct?
 19 A Well, I guess it would be correct that we
 20 did not have a program of that nature, no, sir.
 21 MR. LEWIS: Plaintiffs'
 22 Exhibit G-26.
 23 BY MR. LEWIS:
 24 Q I'm handing you Plaintiffs' Exhibit Number
 25 G-26. Do you recognize this document?

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<p>1 Q No, how did you come into possession of 2 this document shortly after it was originated, as 3 you testified?</p> <p>4 A I think it would have been hand carried by 5 Mr. Walker when he visited the Libby office.</p> <p>6 Q Mr. who?</p> <p>7 A Walker.</p> <p>8 Q Now, he came over to visit you at or about 9 the time of this letter?</p> <p>10 A Sometime after that, yes, sir.</p> <p>11 Q Do you know whose handwriting is on the -- 12 these two pages?</p> <p>13 A No, sir, I don't.</p> <p>14 Q Did Mr. Walker do what Mr. Park suggested 15 here in this letter?</p> <p>16 A Yes, sir, I believe he did.</p> <p>17 Q He came over to you and talked to you 18 about some certain personnel that were diseased?</p> <p>19 A Yes, sir.</p> <p>20 Q And he asked you to basically keep this 21 under wraps, correct?</p> <p>22 A Yes, sir.</p> <p>23 Q And he said, I -- "I would therefore 24 suggest that you take this up with E.D. Lovick at 25 the time of your visit and if possible without</p>	<p>1 A Yes, sir.</p> <p>2 Q Does it say that?</p> <p>3 A Yes, sir.</p> <p>4 Q And he is referring to Perley Vatland, Rex 5 Smith, Hal Shrewsbury, Harvey Noble, Lloyd Miller, 6 Michael McNair, Eitel Ludwig, Edward Gaston and 7 Walter Baker; is that correct?</p> <p>8 A Yes, sir.</p> <p>9 Q All of those men were diseased at that 10 time; is that correct?</p> <p>11 A Apparently.</p> <p>12 Q How many of those men died of lung 13 disease?</p> <p>14 MR. GRAHAM: I would object on the 15 basis of foundation and relevancy.</p> <p>16 MR. LEWIS: I'll lay some 17 foundation.</p> <p>18 BY MR. LEWIS:</p> <p>19 Q Do you know these men?</p> <p>20 A Yes, sir.</p> <p>21 Q Did you know these men?</p> <p>22 A Yes, sir.</p> <p>23 Q Did they all work at W.R. Grace?</p> <p>24 A Yes, sir.</p> <p>25 Q All working men?</p>
<p>1 anyone else being in on the conversation." Did he 2 do that?</p> <p>3 A Yes, sir.</p> <p>4 Q Did you see that no -- Did you yourself 5 see that no one else heard your conversation?</p> <p>6 A What was that?</p> <p>7 Q Did you yourself see that no one else 8 heard your conversation?</p> <p>9 A I don't believe anyone else did, no, sir.</p> <p>10 Q Did their letter conclude that the reports 11 of your disease experience here were alarming 12 because you had nine employees that "... must 13 definitely be protected over and above the 14 protection they have been afforded in the past 15 year"?</p> <p>16 A Would you please repeat that question?</p> <p>17 Q Did you and -- Did you agree with 18 Mr. Park's assessment that your reports were 19 alarming because you had nine employees that 20 "... must definitely be protected over and above the 21 protection they had been afforded in the past 22 year"?</p> <p>23 A I don't see where he says that in here.</p> <p>24 Q Look at the first full paragraph on the 25 second page.</p>	<p>1 A Yes, sir.</p> <p>2 Q All of them had lung disease?</p> <p>3 MR. GRAHAM: Again, I would object on 4 the basis of foundation as far as medical 5 capabilities of the witness, Your Honor.</p> <p>6 THE COURT: If he knows. If he 7 knows, he can answer.</p> <p>8 THE WITNESS: I believe that all 9 these men did, yes, sir.</p> <p>10 BY MR. LEWIS:</p> <p>11 Q Did all of them die of lung disease?</p> <p>12 A No, sir.</p> <p>13 Q Did a number of them die of lung disease?</p> <p>14 A Yes, sir.</p> <p>15 Q Which ones?</p> <p>16 MR. GRAHAM: Objection, relevancy, 17 Your Honor.</p> <p>18 THE COURT: Overruled.</p> <p>19 THE WITNESS: I can't tell you for 20 sure which ones. I can tell you which ones died.</p> <p>21 BY MR. LEWIS:</p> <p>22 Q All right. If you don't know, you don't 23 know. We will get on to another subject. That's 24 fair. But you do know that they all had lung 25 disease?</p>

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<p>1 A No, sir, I know some of them did.</p> <p>2 MR. LEWIS: Plaintiffs' Exhibit G-26</p> <p>3 offered.</p> <p>4 MR. GRAHAM: We would object on the</p> <p>5 basis of it being hearsay, Your Honor. Not within</p> <p>6 the exception to the business records rule.</p> <p>7 THE COURT: Overruled. Exhibit 26 --</p> <p>8 G-26 may be admitted -- is admitted over objection.</p> <p>9 MR. LEWIS: Can I have a minute to</p> <p>10 confer, Your Honor?</p> <p>11 THE COURT: Pardon? Oh, yeah.</p> <p>12 BY MR. LEWIS:</p> <p>13 Q Did the government ever ask you folks for</p> <p>14 information concerning the danger to your</p> <p>15 employees?</p> <p>16 A No, sir, not that I know of.</p> <p>17 Q Department of Health didn't -- United</p> <p>18 States Department of Health didn't ask you for any</p> <p>19 information?</p> <p>20 A Yes, sir, the Department of Health asked</p> <p>21 us for some information one time.</p> <p>22 Q And did they ask you for information</p> <p>23 concerning mortality rates on the part of your</p> <p>24 workers who were exposed to asbestos?</p> <p>25 A No, sir, I don't believe that's what they</p>	<p>1 that there were inquiries concerning the health</p> <p>2 hazards associated with asbestos on Vermiculite</p> <p>3 Mountain?</p> <p>4 A That's not what the inquiry was, no, sir.</p> <p>5 Q Was it just about dust controls?</p> <p>6 A No, sir.</p> <p>7 Q Now, go back to Exhibit G-40.1. I think</p> <p>8 it's already in evidence. If you can find it.</p> <p>9 (Pause.) Do you have that, sir?</p> <p>10 A Yes, sir.</p> <p>11 Q Was this report of March 3, 1969, from</p> <p>12 Schneider to Vining, the result of the inquiry from</p> <p>13 the Department of Health, Education and Welfare?</p> <p>14 A I don't know.</p> <p>15 Q This was a Personal and Confidential,</p> <p>16 Insitu and Environmental Dust Controls for</p> <p>17 Vermiculite Mining Operations report generated by</p> <p>18 Eaton, Kujawa and Kostic and under cover letter of</p> <p>19 Schneider; is that correct?</p> <p>20 A Yes, sir.</p> <p>21 Q And at the time of this report in 1969,</p> <p>22 you still had a significant problem at the old dry</p> <p>23 mill, correct?</p> <p>24 A Yes, sir. Yes.</p> <p>25 Q And in fact you never really got the old</p>
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<p>1 asked for.</p> <p>2 Q They didn't ask for your cooperation</p> <p>3 concerning a study of the health conditions of your</p> <p>4 workers who were exposed to tremolite?</p> <p>5 A Yes, sir, they did.</p> <p>6 Q Did you cooperate with that study?</p> <p>7 A Yes, sir.</p> <p>8 Q Did you cooperate immediately with the</p> <p>9 study?</p> <p>10 A No, sir.</p> <p>11 Q Initially, you determined not to</p> <p>12 cooperate; is that true?</p> <p>13 A Yes, sir.</p> <p>14 Q There was what, a year or so delay before</p> <p>15 you actually cooperated?</p> <p>16 A Well, it was approximately a year, yes,</p> <p>17 sir.</p> <p>18 Q Did you tell your employees that the</p> <p>19 Department of Health, Education and Welfare were</p> <p>20 inquiring as to the danger on Vermiculite Mountain?</p> <p>21 MR. GRAHAM: Objection --</p> <p>22 THE WITNESS: That is not what they</p> <p>23 told us.</p> <p>24 BY MR. LEWIS:</p> <p>25 Q Did you tell your employees about the fact</p>	<p>1 dry mill in shape, and the only way you could really</p> <p>2 get that -- make that place safe was to shut it</p> <p>3 down; is that true?</p> <p>4 A Yes, sir.</p> <p>5 Q And anybody who worked up at that old dry</p> <p>6 mill was exposed to high levels of asbestos fibers;</p> <p>7 is that true?</p> <p>8 A Yes, sir.</p> <p>9 Q And that was true in 1973 and 1974; is</p> <p>10 that correct?</p> <p>11 A Yes, sir, that's correct.</p> <p>12 Q And if Dan Schnetter worked up there, he</p> <p>13 was exposed to a high level of asbestos fibers; is</p> <p>14 that correct?</p> <p>15 A Yes, sir.</p> <p>16 MR. LEWIS: Now, I would like to show</p> <p>17 you G-40.2.</p> <p>18 BY MR. LEWIS:</p> <p>19 Q There you go, sir. For purposes of</p> <p>20 identification, G-40.2 is a June 19, 1996 (sic),</p> <p>21 document; is that correct?</p> <p>22 A 'Sixty-nine, sir.</p> <p>23 Q You're right, 1969. I told everybody I</p> <p>24 couldn't see through these glasses, Your Honor.</p> <p>25 This is from Peter Kostic; is that correct?</p>

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<p>1 A Yes, sir.</p> <p>2 Q And can you tell who it's addressed to by 3 the form of this letter?</p> <p>4 A It's addressed to H.A. Brown.</p> <p>5 Q And is there a copy to R.A. Kulberg?</p> <p>6 A Yes, sir.</p> <p>7 Q And what was his position with the 8 company?</p> <p>9 A I believe that he was Peter Kostic's boss.</p> <p>10 Q Would he have had responsibility in the 11 area of safety of your employees?</p> <p>12 A Yes, sir, I -- I believe so.</p> <p>13 Q And Mr. Brown, what was his position?</p> <p>14 A He was executive vice president of 15 Construction Products Division.</p> <p>16 Q One step below Mr., what, Sterrett, or who 17 was it at that time?</p> <p>18 A Mr. Vining.</p> <p>19 Q Mr. Vining. You remember I asked you the 20 question about putting sick men back in the 21 workplace exposed to asbestos?</p> <p>22 A Yes, sir.</p> <p>23 Q Does Kostic take up that subject in this 24 letter?</p> <p>25 A I would like to point out I've never seen</p>	<p>1 read the letter?</p> <p>2 MR. GRAHAM: Object. The letter 3 speaks for itself, Your Honor. It has been offered 4 as an exhibit and admitted as an exhibit.</p> <p>5 THE COURT: Overruled. He may read 6 the letter.</p> <p>7 MR. LEWIS: Thank you, sir.</p> <p>8 BY MR. LEWIS:</p> <p>9 Q "Regarding our deliberations and questions 10 having to do with pneumoconiosis cases, here are a 11 few of my thoughts: If a man has a definite case of 12 pneumoconiosis, is it prudent to put him to work in 13 an environment containing fibers in air in 14 quantities less than the threshold limit? How many 15 more years could he be expected to live under such 16 circumstances as compared to complete removal from 17 such environment? Should he be required to wear 18 approved respiratory protective equipment?</p> <p>19 Two: "What are some of the things he 20 should be advised to help him keep as physically fit 21 as possible, i.e. no smoking, vitamins, diet, etc.?</p> <p>22 How much should (he) be told of his condition?</p> <p>23 Three: "Is disability retirement an 24 acceptable approach? At what stage and/or age 25 should this be considered? What are some of the</p>
<p>1 this letter before right now, so --</p> <p>2 Q Is that right?</p> <p>3 A That's correct.</p> <p>4 Q You don't doubt that it's a W.R. Grace 5 record, do you?</p> <p>6 A No, sir.</p> <p>7 Q Do you agree it was prepared in the 8 ordinary and usual course of business?</p> <p>9 A I would think so, yes, sir.</p> <p>10 Q And Kostic was a -- at least a safety 11 engineer for W.R. Grace?</p> <p>12 A Yes, sir.</p> <p>13 MR. LEWIS: Offer Plaintiffs' 14 Exhibit G-40.2.</p> <p>15 MR. LEWIS: Objection, competency, 16 hearsay. Not within the business records exception, 17 Your Honor.</p> <p>18 THE COURT: Overruled. It may be 19 admitted.</p> <p>20 BY MR. LEWIS:</p> <p>21 Q I guess rather than ask you questions 22 about this letter, it may be best for me to read 23 it. You have never seen this letter before?</p> <p>24 A Not that I recall, no.</p> <p>25 MR. LEWIS: May I have permission to</p>	<p>1 rules covering disability retirement?</p> <p>2 Four: "What should be our overall program 3 of chest x-ray examinations? Who should interpret 4 the pictures? How should comparison with previous 5 pictures be handled? I shall be glad to set up a 6 meeting with J-M's top medical and workmen's 7 compensation personnel whenever you're ready."</p> <p>8 Peter Kostic.</p> <p>9 Now, in fairness to you, sir, that letter 10 was never forwarded to you, correct?</p> <p>11 A I don't ever recall seeing it before 12 today, sir.</p> <p>13 Q And remarkably it only pertains to the 14 problems here in Libby; is that true?</p> <p>15 A I don't think that's true.</p> <p>16 Q Well, where else did you have asbestos 17 exposure?</p> <p>18 A At every expanding plant.</p> <p>19 Q Oh, you did. So you sent the vermiculite 20 out from here in its concentrate form and it was 21 expanded, right?</p> <p>22 A Yes, sir.</p> <p>23 Q And where were your expansion plants?</p> <p>24 A Located all over the country. There were 25 about -- between 20 and 30 of them in the United</p>

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<p>1 States.</p> <p>2 Q And so you never told the men at the 3 expansion plants about these harmful effects of 4 asbestos either, did you?</p> <p>5 A No.</p> <p>6 MR. GRAHAM: Objection, relevancy,</p> <p>7 Your Honor.</p> <p>8 THE COURT: Sustained.</p> <p>9 BY MR. LEWIS:</p> <p>10 Q For certain you never told the men here. 11 You have told us that, right?</p> <p>12 MR. GRAHAM: Objection, repetitive,</p> <p>13 Your Honor.</p> <p>14 BY MR. LEWIS:</p> <p>15 Q Did you tell --</p> <p>16 THE COURT: Overruled. That one is 17 overruled. You may answer.</p> <p>18 THE WITNESS: Well, the people, the 19 men that were here, we never had a program of 20 telling them as such. But the men that were here, 21 they certainly had, by observation and so on and 22 association -- they would have known of these 23 things, and I'm sure that many of them were told on 24 an individual basis.</p> <p>25 BY MR. LEWIS:</p>	<p>1 able to figure that out, right?</p> <p>2 A It could have been both.</p> <p>3 Q But in any event, did the management 4 people back in Boston ever tell you about these 5 considerations concerning exposing diseased men to 6 more asbestos --</p> <p>7 MR. GRAHAM: You know, I would 8 object. It misstates the document that was read by 9 counsel, which doesn't even mention asbestos.</p> <p>10 BY MR. LEWIS:</p> <p>11 Q Well, do you understand pneumoconiosis to 12 be a disease associated with asbestos?</p> <p>13 A I understand pneumoconiosis to be a 14 disease of the lungs, yes, sir.</p> <p>15 Q And in the context of this letter, there 16 is no question that this pneumoconiosis is just 17 another problem, a lung problem related to exposure 18 to vermiculite; is that true?</p> <p>19 MR. GRAHAM: I would object.</p> <p>20 Foundation.</p> <p>21 BY MR. LEWIS:</p> <p>22 Q Is that true?</p> <p>23 THE COURT: Overruled. He may 24 answer, if he knows.</p> <p>25 THE WITNESS: It could -- It could</p>
<p>1 Q Some may have learned that their men -- 2 their brethren were diseased and dying, by looking 3 at them, right?</p> <p>4 A Yes, sir.</p> <p>5 Q Many of the men were diseased and then 6 they'd died after they left the company, after they 7 retired, correct?</p> <p>8 A Yes, sir.</p> <p>9 Q And that's because of the latency of this 10 particular kind of disease, right?</p> <p>11 A In some cases, yes, sir.</p> <p>12 Q For example, Dan Schnetter left your 13 company in 1983 having --</p> <p>14 MR. SLOVAK: '81.</p> <p>15 BY MR. LEWIS:</p> <p>16 Q -- in 1981, having no reason to believe 17 that he was going to get this disease. He had no 18 reason to know that, did he?</p> <p>19 A I don't know.</p> <p>20 Q And the men were getting sick, but just 21 seeing that they were sick may not have told them 22 why they were getting sick; do you agree with that?</p> <p>23 A Yes, sir.</p> <p>24 Q Was it nuisance dust or was it something 25 worse than nuisance dust, they might not have been</p>	<p>1 have been -- I don't know what all the cause of that 2 disease could be. It could probably be several 3 causes.</p> <p>4 BY MR. LEWIS:</p> <p>5 Q Well, is pneumoconiosis frequently 6 associated with asbestos exposure?</p> <p>7 MR. GRAHAM: Again, I would object.</p> <p>8 Foundation, Your Honor.</p> <p>9 MR. LEWIS: I'll ask foundation.</p> <p>10 BY MR. LEWIS:</p> <p>11 Q Do you know whether pneumoconiosis is 12 frequently associated with asbestos exposure?</p> <p>13 A I would have to say I really don't know.</p> <p>14 Q Haven't you filed reports indicating that 15 one of the problems associated with exposure to 16 asbestos is pneumoconiosis?</p> <p>17 A Yes, sir.</p> <p>18 Q Where did you get that information if you 19 didn't know what you were saying in those reports?</p> <p>20 I mean, let me rephrase the question. If you didn't 21 know that pneumoconiosis was associated with 22 asbestos exposure, where did you get the information 23 to put that in your reports?</p> <p>24 A My point is, is that these people that 25 were subject to this were shown to have</p>

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1 pneumoconiosis. Those conditions may have been
2 caused by asbestos or they may have been caused by
3 something else.
4 Q Okay. I think that bags the question
5 here. I will ask you this. Regardless of whether
6 it was asbestosis or pneumoconiosis or any lung
7 disease, were you ever advised by the high
8 management officials back in Boston of Mr. Kostic's
9 concern that these people that had diseased lungs
10 not be exposed to more asbestos?
11 A I don't believe so, no, sir.
12 Q Were you ever advised by management
13 officials in Boston or Cambridge of Mr. Kostic's
14 concern that men with pneumoconiosis, with lung
15 problems, be advised to keep as physically fit as
16 possible, take vitamins, diet or whatever they can
17 do to minimize the impact of their disease? Ever
18 advised of that?
19 A I don't believe so.
20 THE COURT: Would this be a
21 convenient place to stop, counsel?
22 MR. LEWIS: Yes, sir
23 THE COURT: Very well. Ladies and
24 gentlemen of the jury, we will take a 15 minute
25 recess until 3:00. Once again you're admonished not

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1 to discuss this case among yourselves or with anyone
2 else, nor allow anyone to discuss the case with
3 you. Nor shall you express or form any opinion
4 regarding the matter until it's finally submitted to
5 you for your decision.
6 (A recess was held in the proceedings.)
7
8 THE COURT: Mr. Lewis, you may
9 continue.
10 MR. LEWIS: Thank you Your Honor.
11 Could I have Exhibit 47, please.
12 (A recess was held in the proceedings.)
13 MR. LEWIS: What exhibit were we on
14 when we finished here?
15 THE CLERK: 40.2.
16 MR. LEWIS: 40.2. I apologize, Your
17 Honor, for taking so long, but the only way we can
18 get this stuff in is -- we have a lot of documents
19 here and Mr. Lovick is the only person from W.R.
20 Grace that is here. We will try to speed it up as
21 fast as we can. 40.2 is in evidence; is that
22 correct, Your Honor?
23 THE COURT: Yes, over Mr. Graham's
24 objection.
25 MR. GRAHAM: That's correct, Your

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1 Honor.
2 MR. LEWIS: Most strenuous objection.
3 MR. GRAHAM: Not very strenuous.
4 Actually pretty quiet.
5 MR. LEWIS: Okay.
6
7 CROSS-EXAMINATION CONTINUED
8 BY MR. LEWIS:
9 Q Just for clarification purposes, I'm
10 handing you Plaintiffs' Exhibit 47. Earlier today
11 we talked about Exhibit 47.1. Do you have that
12 there?
13 THE COURT: I think they are in the
14 order that they were offered.
15 BY MR. LEWIS:
16 Q Do you recall testifying about
17 Exhibit 47.1, that you don't think you ever received
18 this document concerning the adverse effects of
19 smoking and asbestos back at the time that the
20 document was issued on March 31, 1971?
21 A No, sir, I don't believe I did.
22 Q Okay. I would like you to look at
23 document number 47. G-47. It's a very poor copy.
24 Can you read it? Don't read it out loud, but can
25 you read it?

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1 A Yes, I can read most of it.
2 Q Okay. That document is also from
3 Mr. Brown; is that correct?
4 A Yes, sir.
5 Q And can you tell who that goes to?
6 A Well, it's written to E.D. Lovick and
7 O.F. --
8 Q It's written to you, right?
9 A It's written to me and someone else, and I
10 can't read the second name. I don't know the second
11 name. No, sir. I can't read it.
12 Q Does that appear to be the -- The date of
13 that document, can you tell what that document
14 says? Is it March 18, 1971?
15 A It looks like that's the date, yes, sir.
16 Q And it's from Mr. Brown, and there are
17 other people copied. And is that a document that
18 was prepared during the ordinary and usual course of
19 the business of W.R. Grace and Company?
20 A I would say so, yes, sir.
21 Q And it is addressed to you, but from your
22 earlier testimony, I'm not sure whether you received
23 it or not, and I would like you to just read it over
24 to yourself, and then I'll ask you whether you
25 received it.

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<p>1 A (Pause.) Yes, sir. I honestly can't say 2 whether I remember this or not.</p> <p>3 Q If you had received it, would it have 4 informed you of the synergistic effect of cigarette 5 smoking and asbestos exposure as early as March of 6 1971?</p> <p>7 A Yes, sir.</p> <p>8 MR. GRAHAM: Objection, the document 9 speaks for itself and calls for speculation on his 10 part as to what he may have learned from the 11 document, if it goes beyond the document itself.</p> <p>12 THE COURT: Well, the document is 13 addressed to him. Even though he says he doesn't 14 recall it, it's a document. Overruled. You may 15 answer.</p> <p>16 THE WITNESS: Yes, sir, it would 17 have.</p> <p>18 MR. LEWIS: Offer G-47.</p> <p>19 THE COURT: Objection, I assume, 20 Counsel?</p> <p>21 MR. GRAHAM: No, I have no objection 22 to the counsel. It was just the question that I had 23 the objection to.</p> <p>24 THE COURT: You don't object to it 25 being admitted?</p>	<p>1 by H.A. Brown, a W.R. Grace official on March 3, 2 1971; is that correct?</p> <p>3 A That's what it states, yes, sir.</p> <p>4 Q Have you ever seen that report before? Or 5 that extracts, to be more accurate?</p> <p>6 A I don't remember.</p> <p>7 Q But it documented as early as 1971 the 8 synergistics -- in fact, it has a paragraph entitled 9 synergistics?</p> <p>10 A Right.</p> <p>11 Q Do you know what synergism means?</p> <p>12 A One or more different elements or one or 13 more different matters combined -- Combined, they 14 tend to exacerbate the influence of either one of 15 them alone.</p> <p>16 Q It's a little bit like two and two doesn't 17 equal four, two and two equals 24, right? Something 18 like that?</p> <p>19 A Something like that, yes, sir.</p> <p>20 Q All right.</p> <p>21 MR. LEWIS: Plaintiffs' Exhibit 48 -- 22 G-48. Excuse me.</p> <p>23 BY MR. LEWIS:</p> <p>24 Q Handing you what has been marked as 25 Plaintiffs' G-48. Have you seen that document</p>
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<p>1 MR. GRAHAM: No.</p> <p>2 THE COURT: Okay.</p> <p>3 BY MR. LEWIS:</p> <p>4 Q It is copied to Peter Kostic; is that 5 correct?</p> <p>6 A I can't tell.</p> <p>7 Q How about D.G. Powell?</p> <p>8 A I don't know who that is.</p> <p>9 Q And it's somebody from NRA; is that 10 correct? J.F. Brower from Enoree? Was there a J.F. 11 Brower in Enoree?</p> <p>12 A That's not familiar to me. That's where 13 our other plant is -- was -- is.</p> <p>14 Q That company -- That letter was a report 15 from the United States Department of the Interior, 16 Bureau of Mines, correct?</p> <p>17 A That's extracts from that report.</p> <p>18 Q Okay. And that suggests that asbestos is 19 a carcinogen; is that correct?</p> <p>20 A Yes, sir.</p> <p>21 Q And you already knew that by this time, 22 1971?</p> <p>23 A Yes, sir.</p> <p>24 Q The report, though, itself is actually 25 dictated -- was prepared in 1969 and then extracted</p>	<p>1 before?</p> <p>2 A I don't recall having seen it before, no, 3 sir.</p> <p>4 Q Was it -- Does it purport to be routed to 5 Libby?</p> <p>6 A Well, no, it does not.</p> <p>7 Q Well, was R.L. Olivario in Libby at the 8 time?</p> <p>9 A Yes, sir. A copy of it is --</p> <p>10 Q That's what I mean, a copy would have been 11 routed?</p> <p>12 A Yes, sir.</p> <p>13 Q The date of it is October 21, 1971, 14 correct?</p> <p>15 A Yes, sir.</p> <p>16 Q Does it indicate problems with fibers at 17 the plant or is it something that's beyond your 18 knowledge?</p> <p>19 A Well, it -- It regards fibers at the 20 plant, yes, sir.</p> <p>21 Q Is it a document that was prepared in the 22 ordinary and usual course of the business of W.R. 23 Grace?</p> <p>24 A I believe so, yes, sir.</p> <p>25 Q Does it have Cambridge to the top?</p>

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<p>1 A Yes, sir.</p> <p>2 Q It's from Peter Kostic to H.A. Brown,</p> <p>3 right?</p> <p>4 A Yes, sir.</p> <p>5 Q It talks about somebody by the name of Rex</p> <p>6 Smith; do you see that?</p> <p>7 A Yes, sir.</p> <p>8 Q Is there some problem with something</p> <p>9 related to Rex Smith there, or do you understand</p> <p>10 that?</p> <p>11 A Well, what it appears that -- the Bureau</p> <p>12 of Mines were here and took dust samples and Rex</p> <p>13 Smith at the same time took dust samples along with</p> <p>14 them, which was a very usual thing for our people to</p> <p>15 do, to see that there was a correlation. And in</p> <p>16 this case, there was a vast difference between the</p> <p>17 samples that Rex Smith took and the ones that the</p> <p>18 Bureau of Mines took.</p> <p>19 Q Who was Rex Smith?</p> <p>20 A He was one of our employees, and he took</p> <p>21 dust samples for us.</p> <p>22 Q And his dust samples in 1970 showed a</p> <p>23 lower asbestos content than the Bureau of Mines,</p> <p>24 right?</p> <p>25 A These did, yes, sir.</p>	<p>1 was the letter to Mr. Bushell from Mr. O.F. Stewart,</p> <p>2 and you testified that that was prepared in the</p> <p>3 ordinary and usual course of the business of W.R.</p> <p>4 Grace and maintained in the ordinary and usual</p> <p>5 course of business of W.R. Grace; is that true?</p> <p>6 A Yes, sir.</p> <p>7 MR. LEWIS: Offer G-24.4.</p> <p>8 MR. GRAHAM: Object as hearsay, Your</p> <p>9 Honor, without -- outside the scope of the business</p> <p>10 records rule.</p> <p>11 THE COURT: Objection is overruled.</p> <p>12 BY MR. LEWIS:</p> <p>13 Q The next document is 20.5. Do you have</p> <p>14 G-20.5 in front of you, sir?</p> <p>15 A Yes, sir.</p> <p>16 Q Does that appear to be a Zonolite</p> <p>17 pre-printed interoffice correspondence memo?</p> <p>18 A Yes, sir.</p> <p>19 Q It indicates that Zonolite is a division</p> <p>20 of W.R. Grace and Company?</p> <p>21 A Yes, sir.</p> <p>22 Q It's a March 2, 1965, document?</p> <p>23 A Yes, sir.</p> <p>24 Q From J.A. Kelley, who -- in Chicago, who</p> <p>25 was the -- at that time was president of the</p>
<p>1 Q Were you able to figure out or determine</p> <p>2 what happened?</p> <p>3 A No, sir.</p> <p>4 Q So there was never any conclusion on</p> <p>5 that?</p> <p>6 A I don't know whether there is or not, but</p> <p>7 not to my knowledge there was not.</p> <p>8 Q You just knew of the incident, but you</p> <p>9 didn't know of the result; is that fair?</p> <p>10 A I'm not even sure that I knew of the</p> <p>11 incident.</p> <p>12 Q So you can't -- other than to say that</p> <p>13 this is a business record to your company, you</p> <p>14 really don't know anything about this document?</p> <p>15 A No, sir, I do not.</p> <p>16 Q Or this discrepancy? Let's call it a</p> <p>17 discrepancy.</p> <p>18 A No, sir, I do not.</p> <p>19 MR. LEWIS: There is a couple of</p> <p>20 exhibits, Your Honor, that we talked about but we</p> <p>21 never offered. They are Plaintiffs' Exhibits 20.4</p> <p>22 and 20.5. And I'm going to re-lay foundation just</p> <p>23 to be perfectly careful here.</p> <p>24 BY MR. LEWIS:</p> <p>25 Q We talked extensively about 20.4. That</p>	<p>1 Zonolite Division, right?</p> <p>2 A Yes, sir.</p> <p>3 Q To his supervisor, Mr. Blackwood, in</p> <p>4 Cambridge, Massachusetts?</p> <p>5 A Yes.</p> <p>6 Q Do you have any reason to doubt that this</p> <p>7 was prepared in the ordinary and usual course of the</p> <p>8 business at W.R. Grace?</p> <p>9 A No, sir.</p> <p>10 Q And does it appear to be a document that</p> <p>11 would be regularly maintained in the business</p> <p>12 records of W.R. Grace?</p> <p>13 A Yes, sir.</p> <p>14 MR. LEWIS: Offer Exhibit 20.5.</p> <p>15 MR. GRAHAM: The same hearsay</p> <p>16 objection, Your Honor.</p> <p>17 THE COURT: Objection is overruled.</p> <p>18 BY MR. LEWIS:</p> <p>19 Q And this refers to correspondence from</p> <p>20 Maryland Casualty Company; is that correct?</p> <p>21 A Yes.</p> <p>22 Q It says, "Dear George: I'm attaching</p> <p>23 correspondence from Maryland Casualty Company</p> <p>24 regarding the Libby situation with regard to</p> <p>25 possible risk of health hazard. We are going to</p>

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<p style="text-align: right;">Page 189</p> <p>1 follow Maryland Casualty's recommendations, but we 2 are going to try to get them to pay the bill since 3 we will be unable to monitor the activities of their 4 consultant. As you can see from Dr. Spicer's 5 letter, it is a complex problem which we have known 6 all along. The only real answer is to eliminate 7 exposure." Is that what your president said on that 8 date?</p> <p>9 A Yes, sir.</p> <p>10 Q Now we talked briefly about Mr. Oliverio. 11 When did he come to Libby to work? 12 A In -- I believe it was 1971. 13 Q And what was his position when he came in 14 '71? 15 A He was general manager of the Libby 16 operation. 17 Q Had he ever worked at Libby before? 18 A No, sir. 19 Q And how long did he work here in Libby? 20 A Until 1979. 21 Q Did he work in the office? 22 A Yes, sir. 23 Q Was he -- Did you inform him of the health 24 hazards of asbestos that were diseaseing your men? 25 A Yes, sir, he would have become familiar</p>	<p style="text-align: right;">Page 191</p> <p>1 Mr. Oliverio did to bring -- He never told the men 2 about this problem, did he, that you saw? 3 A I don't know what he told the men. 4 MR. LEWIS: G-51, please. G-51. 5 BY MR. LEWIS: 6 Q There you go, sir. Plaintiffs' 7 Exhibit G-51 is a letter on Cambridge letterhead 8 dated June 5, 1972, from Mr. Eschenbach to 9 Mr. Vining; is that true? 10 A Yes, sir. 11 Q And the subject of the letter is Asbestos 12 Update; is that correct? 13 A Yes, sir. 14 Q And did you get a copy of this letter? 15 A No, sir. 16 Q Have you ever seen this letter before? 17 A I don't believe so, no, sir. 18 Q By 1972, you knew full well by then, as 19 you testified earlier, that you had a significant 20 disease problem associated with asbestos exposure at 21 your plant, right? 22 A Yes, sir. 23 Q Okay. And was there any doubt in your 24 mind that the disease to your men's lungs was being 25 caused by asbestos exposure?</p>
<p style="text-align: right;">Page 190</p> <p>1 with that. 2 Q Now, he's not available now; is that 3 right? 4 A No, sir, he's not. 5 Q Is he deceased? 6 A Yes, sir. 7 Q Do you know what caused his death? 8 MR. GRAHAM: Objection, relevancy, 9 Your Honor. 10 BY MR. LEWIS: 11 Q If you know. 12 THE COURT: If you know. Overruled. 13 THE WITNESS: As I understand it, he 14 died of -- 15 BY MR. LEWIS: 16 Q To be fair, I don't know what the answer 17 is, but he didn't die of anything related to 18 asbestos? 19 A No, sir. 20 Q Okay. But he's not available for this 21 trial that went on from the time he became president 22 until '71 until he left, right? 23 A Yes. As I understand it, he died of 24 pancreatic, liver cancer. 25 Q You don't know of anything that</p>	<p style="text-align: right;">Page 192</p> <p>1 A There was no doubt that -- to me that it 2 was being caused by dust cancer -- or dust 3 exposure. 4 Q And in 1971, you had already seen some of 5 the men who worked for you who unfortunately passed 6 away because of lung disease? 7 MR. GRAHAM: Objection, repetitive, 8 Your Honor. 9 MR. LEWIS: I'm laying some 10 foundation here, Your Honor -- 11 THE COURT: Proceed. 12 MR. LEWIS: -- for a question 13 regarding this document. 14 THE WITNESS: Yes, sir, that's true. 15 BY MR. LEWIS: 16 Q Mr. Eschenbach, at that time, was charged 17 with some kind of public health -- company health 18 responsibility; is that right? 19 A Yes, sir. 20 Q In 1972 he would have been a man who had 21 responsibilities to see that the workplace was as 22 safe as possible. That was part -- the primary 23 function of his job -- One of them? 24 A I would think that would be part of his 25 job, yes, sir.</p>

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<p>1 Q He was -- He was an industrial hygienist, 2 toxicologist or some sort of thing?</p> <p>3 A Yes, sir.</p> <p>4 Q Do you know why Mr. Eschenbach would be 5 involved with claims?</p> <p>6 A No, sir.</p> <p>7 Q Do you know why Mr. Eschenbach would try 8 to help the company develop defenses to tremolite 9 asbestos claims when everybody here knew that the 10 disease was being caused by your tremolite 11 asbestos?</p> <p>12 A No, sir, I don't.</p> <p>13 Q Now, Plaintiffs' Exhibit G-51 was marked 14 Personnel and Confidential; is that correct?</p> <p>15 A Yes, sir.</p> <p>16 Q Does it appear to have been prepared in 17 the ordinary and usual course of the business?</p> <p>18 A I believe so, yes, sir.</p> <p>19 Q And Mr. Vining was the highest official in 20 the Construction Products Division at the time?</p> <p>21 A Yes, sir.</p> <p>22 Q Do you know why -- Let me offer the 23 exhibit first.</p> <p>24 MR. LEWIS: Offer Plaintiffs' 25 Exhibit G-51.</p>	<p>1 problems; is that correct?</p> <p>2 A Yes, sir.</p> <p>3 Q Dale Thompson?</p> <p>4 A Yes, sir.</p> <p>5 Q He was a management official, correct?</p> <p>6 A Yes, sir.</p> <p>7 Q Would you look -- Turn to page 2 of 8 Mr. Eschenbach's letter to Mr. Vining. And I'm 9 going to read the second full paragraph. "However, 10 the issue has become emotional that decisions 11 concerning the TLV, etc are not based rationally 12 upon knowledge. It is a foregone conclusion that 13 the TLV will be 2 fibers (greater than 5 microns) 14 per milliliter, and some unions and researchers 15 (Selikoff) pushing for 1 or 0 fiber levels.</p> <p>16 "Lack of significant reliable information 17 to oppose this type of regulation will allow the 18 panic button set to do pretty much as they wish. I 19 believe that we had better start building up a base 20 of -- a bank of knowledge on tremolite, its 21 properties, etc. as well as the medical data to show 22 that Libby has no significant problems. Failure to 23 do so could result in a total lack of defense if 24 someone decides to make allegations concerning 25 'tremolite asbestos.'" Do you see that?</p>
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<p>1 MR. GRAHAM: We would make the same 2 hearsay objections, your Honor.</p> <p>3 THE COURT: Okay, overruled. They 4 will be admitted.</p> <p>5 BY MR. LEWIS:</p> <p>6 Q Now, you had already, by this time, 7 provided high management officials in Boston with 8 extensive data concerning the health experience of 9 diseased individuals at this facility, correct?</p> <p>10 A I believe so, yes, sir.</p> <p>11 Q You provided them with copies of death 12 certificates, correct?</p> <p>13 A Yes.</p> <p>14 Q Showing the cause of deaths, some of them 15 pulmonary problems; is that correct?</p> <p>16 A Yes, sir.</p> <p>17 Q You had provided them with lists of line 18 workers who were diseased with lung problems as a 19 result of asbestos before 1972, correct?</p> <p>20 A Yes, sir.</p> <p>21 Q And had you provided the information even 22 as to management people at the request of the 23 company?</p> <p>24 A I believe so, yes, sir.</p> <p>25 Q For example, Mr. Thompson died of lung</p>	<p>1 A Yes, sir.</p> <p>2 Q Now, based on what you knew at the time, 3 you could not in good faith agree with the 4 suggestion here that you should be developing a bank 5 of knowledge to show that asbestos was not 6 dangerous; is that true?</p> <p>7 A I would like to point out that this is 8 Harry Eschenbach's letter and I've never seen it 9 until right now.</p> <p>10 Q But it did occur in 1972, after you had 11 provided a company with extensive data and extensive 12 reports on the problem that existed here, right?</p> <p>13 A Yes, sir.</p> <p>14 Q And you said that Mr. Eschenbach came out 15 here many times, correct?</p> <p>16 A Yes, sir.</p> <p>17 Q And you said there was no question but 18 there was a huge -- or a significant problem here, 19 right?</p> <p>20 A Yes, sir.</p> <p>21 Q And nobody ever showed that there was 22 medical data or other evidence indicating that there 23 was no significant problem after 1972, as far as you 24 know; is that true?</p> <p>25 A I don't know of any, no, sir.</p>

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<p>1 Q You don't doubt, as you sit here right 2 now, you know very well that this has been a very 3 significant problem and it continues to be a very 4 significant problem; is that true?</p> <p>5 A Yes, sir, I believe that's true.</p> <p>6 Q Okay.</p> <p>7 MR. LEWIS: 30.1 and 47.2 and 50.</p> <p>8 (Pause.)</p> <p>9 BY MR. LEWIS:</p> <p>10 Q I'll let you start looking at these, sir.</p> <p>11 Directing your attention to Plaintiffs'</p> <p>12 Exhibit G-30.1, is this a January 18, 1968, letter</p> <p>13 from the Department of Health, Education and</p> <p>14 Welfare, to Mr. Peter Kostic of the Dewey and Almy</p> <p>15 Division of W.R. Grace and Company?</p> <p>16 A Yes, sir.</p> <p>17 Q And do you recognize Jeremiah R. Lynch as</p> <p>18 the author of this document?</p> <p>19 A Yes, sir.</p> <p>20 Q Do you know who Jeremiah Lynch is?</p> <p>21 A He was an employee of the Department of</p> <p>22 Health, Education and Welfare in Cincinnati and he</p> <p>23 had visited Libby.</p> <p>24 Q Did you ever see a copy of this document?</p> <p>25 A I don't --</p>	<p>1 Q Have you looked at this letter recently?</p> <p>2 A No, sir.</p> <p>3 Q Could you just skim it real quick, and</p> <p>4 I'll just ask you about two questions about it.</p> <p>5 A Okay, sir.</p> <p>6 Q Does this letter suggest that the dust</p> <p>7 concentrations that were measured are from ten to a</p> <p>8 hundred times in excess of the safe limit?</p> <p>9 A That's what it states, yes.</p> <p>10 Q Does it have -- On the second page, does</p> <p>11 it have the raw data or the measurements that were</p> <p>12 taken?</p> <p>13 A Yes, sir.</p> <p>14 Q At the second, fifth and sixth floor of</p> <p>15 what?</p> <p>16 A Undoubtedly the dry mill.</p> <p>17 Q Okay. Okay. Does it also conclude that</p> <p>18 it is likely that a hazardous asbestos exposure does</p> <p>19 exist?</p> <p>20 A That's what it states, yes, sir.</p> <p>21 MR. LEWIS: 47.2.</p> <p>22 BY MR. LEWIS:</p> <p>23 Q Have you seen this document before, sir?</p> <p>24 A Yes, sir.</p> <p>25 Q And is this a May 18-21, 1971, report from</p>
<p>Page 198</p> <p>1 Q Look in the upper left-hand corner. Do</p> <p>2 you have any writing in the upper left-hand corner?</p> <p>3 A Yes, sir, it states, Carbon copies to</p> <p>4 Lovick and Stewart.</p> <p>5 Q Do you recall receiving this document?</p> <p>6 A No, sir, I don't recall.</p> <p>7 Q Do you recognize it as a document that was</p> <p>8 mailed to Kostic and would be in the regular and</p> <p>9 usual -- maintained in the regular and usual course</p> <p>10 of the business of W.R. Grace and Company?</p> <p>11 A Yes, sir.</p> <p>12 Q Were you made aware of the results of this</p> <p>13 letter or the content of this letter by Kostic?</p> <p>14 A Well, I think he made me aware of it by</p> <p>15 sending me a copy and I have -- I don't recall</p> <p>16 receiving it, but I --</p> <p>17 Q Do you have any doubt that you did receive</p> <p>18 it?</p> <p>19 A No, sir, I don't.</p> <p>20 MR. LEWIS: Offer Plaintiffs'</p> <p>21 Exhibit G-30.1.</p> <p>22 MR. GRAHAM: No objection.</p> <p>23 THE COURT: 30.1 will be admitted</p> <p>24 without objection.</p> <p>25 BY MR. LEWIS:</p>	<p>Page 200</p> <p>1 the United States Department of the Interior Bureau</p> <p>2 of Mines?</p> <p>3 A Yes, sir.</p> <p>4 Q And did you folks at W.R. Grace receive</p> <p>5 this in the regular and usual course of your</p> <p>6 business?</p> <p>7 A Yes, sir.</p> <p>8 Q And does it relate to your mine and mill?</p> <p>9 A Yes, sir.</p> <p>10 Q Does it document -- Well, has it been</p> <p>11 maintained in the regular and usual course of the</p> <p>12 business of W.R. Grace?</p> <p>13 A I believe so, yes, sir.</p> <p>14 Q And does it appear to be a genuine copy of</p> <p>15 the document that you saw at or near the time it was</p> <p>16 issued?</p> <p>17 A Yes, sir.</p> <p>18 MR. LEWIS: Move the admission of</p> <p>19 G-47.2.</p> <p>20 MR. GRAHAM: No objection.</p> <p>21 THE COURT: 47.2 will be admitted</p> <p>22 without objection.</p> <p>23 BY MR. LEWIS:</p> <p>24 Q Does this document conclude that you have</p> <p>25 significant problems associated with asbestos</p>

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1 exposure to your employees in the -- near the middle 2 of 1971?	1 about that new mill. You -- The new mill was -- It 2 took awhile to get it on line, and you believe it 3 went on line in '74, right?
3 A Yes, sir, it indicates that,	4 A Yes, sir.
4 Q And specifically documents problems with 5 sweepers working in the old dry mill? Near the 6 bottom of page 4.	5 Q You believe in '74 the old dry mill 6 closed?
7 A Yes.	7 A Yes, sir.
8 Q It says, "Two sweepers were sampled; both 9 were exposed to seven times the proposed TLV. They 10 were required to wear respirators in the dry mill on 11 all but the first floor. During the sweeping and 12 cleanup process, the settled dust, while being 13 swept, fell through the cracks in the floor and 14 added to the ambient dust load in the air." Do you 15 see that?	8 Q You don't remember what month it was?
16 A This is on page 4, sir?	9 A Well, as I remember, the new mill went on 10 stream early in the year, like in March or April, 11 but I believe that the -- the old dry mill operated 12 at least once after that for a very short period of 13 time, maybe four days.
17 Q Maybe we've got another page enumeration 18 problem.	14 Q Weren't there problems with the new mill 15 that caused the dry mill to go on into -- at least 16 into 1975 and perhaps into '76?
19 THE COURT: Six, I think.	17 A No, sir, I don't believe it ever operated 18 in '75 and '76.
20 MR. LEWIS: See, it's numbered 4 on 21 this one (indicating).	19 Q You don't recall that?
22 THE WITNESS: Okay.	20 A No, sir.
23 BY MR. LEWIS:	21 Q Well, in any event, the new mill used a 22 wet process, right?
24 Q Do you see that there, sir?	23 A Yes, sir.
25 A Yes, sir, I do.	24 Q And there is advantages to the wet process 25 because there is not as much asbestos in the air,
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1 Q Does it -- It indicates that company 2 officials involved in this inspection report 3 included Mr. Oliverio, the manager; is that true?	1 correct?
4 A Yes.	2 A Yes, sir.
5 Q Mr. Luther Krupp, Mine Superintendent and 6 Mr. John Riggleman, Mill Superintendent, correct?	3 Q But even in the wet mill, the new mill, 4 there was mud that would cake on equipment and 5 things, and on the men; is that correct?
7 A Yes, sir.	6 A In some places, yes, sir, the asbestos 7 could cake on some of the machinery.
8 Q Conclusions and Recommendations, it says 9 the exposures in the dry mill -- This would be about 10 page 6 I think, under Conclusions and 11 Recommendations. Do you see that?	8 Q It would cake on machinery and it would 9 cake on their clothes, correct?
12 A Yes, sir.	10 A Well, I don't know. There shouldn't have 11 been much reason for them to come in contact to have 12 it cake on their clothes.
13 Q Conclusions and Recommendations. "In 14 summation, exposures in the dry mill and associated 15 areas were high." Do you see that?	13 Q If some employees were to come before this 14 court and testify that they had to get up to their 15 knees in asbestos contaminated mud to do their work 16 from time to time, would that be incorrect?
16 A Yes, sir.	17 A No, I can't -- I couldn't say that that 18 was incorrect.
17 Q Then it goes down to third paragraph, 18 "Dusty conditions existed at the concentrate 19 loading bins ..." Where was that at?	19 Q In any event, mud would get on the men's 20 clothing; is that correct?
20 A That was down at the storage and the 21 loading place on the banks of the Kootenai River.	21 A Could, yes, sir.
22 Q And at that time it remarks that the new 23 mill was to be constructed around 1972, right?	22 Q And then -- When it was wet and in a mud 23 form it might be more likely to stick to their 24 clothing than if it were in a dry form, correct?
24 A That's what this states, yes, sir.	25 A That could be, yes, sir.
25 Q Now, I want to talk to you a little bit	

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<p>1 Q And they could carry it around with them 2 on the facility; is that right? 3 A Possibly. 4 Q And take it home, mud on their clothes, 5 correct? 6 A Possibly. 7 Q And when the mud dried, what would happen 8 to the substance? Would it be released into the 9 air? 10 MR. GRAHAM: Objection, calls for 11 total speculation. 12 MR. LEWIS: If you know. 13 THE COURT: If he knows, he can 14 testify. 15 THE WITNESS: I don't know. If it 16 were not -- If it were not handled or so on, I 17 don't know any reason why it wouldn't disintegrate 18 and vaporize and get into the air. 19 BY MR. LEWIS: 20 Q Well, it was a fine mud, right? 21 A Well, it was mud made up of fine 22 particles, yes, sir. 23 Q And what was its consistency? Like 24 ketchup? 25 A No, I think when it was caked on the</p>	<p>1 A I don't recall. 2 Q Could that have happened? 3 A I suppose it could, but there would be 4 very little -- there would be very little reason why 5 that mud would get on anybody's clothing. 6 Q Did you ever see any of that mud on 7 anybody's clothing? 8 A Not that I recall, no, sir. 9 Q But if it did get on somebody's clothing, 10 they could take it right home with them, couldn't 11 they? 12 MR. GRAHAM: Calls for speculation 13 again, Your Honor. 14 THE COURT: Sustained. 15 BY MR. LEWIS: 16 Q Did the men have to work around the 17 machinery with the mud caked on them? 18 A Well, that machinery was an integral part 19 of the concentration process in the mill and 20 ordinarily the machinery where the mud would cake 21 would be entirely covered with water. 22 Q Well, in any event, you said it's 23 conceivable that men could get mud on their clothing 24 and that this mud would be almost pure asbestos, 25 right?</p>
<p>1 machinery, it was solid. 2 Q When it was wet, what was its consistency? 3 A It would be the same way. If it was caked 4 on there, it would be solid. 5 Q Well, did the wet mill process the 6 vermiculite in a wet form? 7 A Yes, sir. 8 Q So there -- In the mud, there would be 9 vermiculite contaminated with asbestos; isn't that 10 the way it worked? 11 A There could be, but generally when it 12 caked on the machinery it was pretty well 13 concentrated and most of the material was asbestos. 14 Q Most of it was asbestos? 15 A Yes, sir. 16 Q Okay. So the mud had a much higher amount 17 of asbestos in it even than the ore, right? 18 A Yes, sir. 19 Q It was almost pure asbestos? 20 A Yes, sir. 21 Q And the mud would get on men's clothing -- 22 Did you ever go into the wet mill? 23 A Many times. 24 Q Did you ever get mud splashed on your 25 pants or anything like that?</p>	<p>1 A Yes, sir, I said that. 2 Q And what would happen to that asbestos 3 after it dried on their clothing, and wherever they 4 would be, that would be just peer speculation, 5 according to you; isn't that right? 6 A Yes, sir, I don't know. 7 Q You would have no reasonable expectation 8 of what would happen to that mud on that clothing? 9 A No, I don't know. 10 Q What about this other support equipment 11 associated with the wet mill? Were there other 12 areas where the men were exposed to asbestos 13 fibers? Were there tunnels or something like that? 14 A Not on a regular basis, no, sir. 15 Q How did the asbestos get to the wet mill? 16 A It would have been in the mill feed. 17 Q Just like it went to the dry mill? 18 A Yes, sir. 19 Q What happened to the mud? What happened 20 to the asbestos mud? Did you have to routinely 21 remove it, discard it or what? 22 A I don't really know. 23 Q Well, if you had asbestos mud almost 24 100 percent tremolite asbestos mud accumulating in 25 the process, at some point you would to to get rid</p>
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1 of this waste; is that correct?	1 A Yes. There would -- The conveyor systems
2 A Yes.	2 in the new mill were very limited and most of the
3 Q Where would that waste go?	3 tailings were handled in the slurry. And -- Which
4 A We're not talking about large quantities	4 meant that the solids were mixed with water and
5 here, I would like to point out.	5 pumped to a point.
6 Q We're talking about pure asbestos, right?	6 Q And would these be taken to a tailings
7 A If it -- If and when it was removed from	7 pond?
8 the machinery, it would go out with the mill	8 A Some of it would, yes.
9 tailings.	9 Q And what would the rest -- where would the
10 Q So how would it get out to the mill	10 rest of it go?
11 tailings?	11 A It would be dumped on the side of the
12 A It would be put -- It would be put on a	12 mountain.
13 tailings belt or in a -- in the slurry that was	13 Q So some of that pure asbestos mud would go
14 pumped to the mill tailings pond.	14 on the side of the mountain and some of it would go
15 Q And would it -- Would the men have to get	15 in the tailings pond; is that correct?
16 in proximity to the tailings belt at any time when	
17 it was working?	16 A Yes, sir.
18 A Well, yes -- Yes.	17 Q Did you ever go out and look at the side
19 Q Any other place where the men would come	18 of the mountain to see where that mud was and what
20 into contact with fly-able or air-borne asbestos?	19 would happen to it, that pure asbestos when it dried
21 A Well, one place that that could happen	20 out?
22 would be in the dryer area. And the dryer was in an	21 A I was out there and looked at the tailings
23 enclosed room. But there would be no workers there	22 pile many times. I don't ever remember looking at
24 at all times. Once in a while they would have to	23 the asbestos.
25 get in there. There was -- Above the dryer there	24 Q Once that pure asbestos was in that water,
	25 like a mud, it was no longer trapped in the ore; is
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1 was a large bag house, and the bags would have to be	1 that correct?
2 changed, and anybody that went into that bag house,	2 A That's correct.
3 they would have to be wearing respirators. And I	3 Q Would you agree with me, just based upon
4 believe that there were -- there were pressure suits	4 your ordinary experience as a human being, that if
5 in there also for those people.	5 some of that asbestos mud had dried on something and
6 Q Okay. Now Mr. Schnetter was an	6 you gave it a kick, you could release asbestos
7 electrician after he left the old dry mill; did you	7 fibers?
8 understand that to be correct?	8 MR. GRAHAM: Objection, relevancy,
9 A Yes, sir.	9 speculation.
10 Q And an electrician, would that job require	10 THE COURT: Overruled. You may
11 him to work all over the mill site?	11 answer if you know, Mr. Lovick.
12 A Yes, sir, he -- An electrician could work	12 THE WITNESS: Well, I don't know.
13 anywhere in the operation.	13 I think the likelihood of that is very, very remote,
14 Q He could work in an area where they had an	14 because there would be no occasion that I know of
15 accumulation of that pure tremolite asbestos mud?	15 that someone would be walking down there.
16 A Yes, sir.	16 BY MR. LEWIS:
17 Q He might have to work around that	17 Q But was it open to the weather?
18 machinery that had that mud on it?	18 A Yes, sir.
19 A Possibly.	19 Q Could it be disturbed by the weather?
20 Q He might have to work on the conveyor	20 A I suppose it's possible, but I think it's
21 system?	21 very unlikely.
22 A Possibly.	22 Q Could it be diluted by rain and snow and
23 Q And that would be the conveyor system	23 spread around?
24 where the pure tremolite asbestos mud would be	24 A I don't know how it would react.
25 discarded with the tailings, correct?	25 Q Well, you do know one thing, there was

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1 100 percent asbestos mud that was being discarded on
 2 the side of that mountain and in the tailings pond,
 3 right?

4 A Yes, sir.

5 Q And the tailings pond was open also,
 6 right? It wasn't covered by anything?

7 A No, sir. It was covered by water.

8 Q Well, the mud that went over the side of
 9 the mountain, that wasn't covered by water and the
 10 rain could get on that, take it right down the
 11 mountain; is that right?

12 A Yes, sir.

13 Q All right. What about, was there an area
 14 where there was a tunnel or anything that an
 15 electrician would have to work in?

16 A Well, yes, there were -- Yes, there were.

17 Q Was there asbestos fibers in that tunnel?

18 A Yes, sir, there could be.

19 Q And there was -- Was there a problem with
 20 the ventilation system in any of those tunnels?

21 A Yes, sir.

22 Q So once that asbestos got worked up, those
 23 fibers, it may not easily be ventilated; is that
 24 correct?

25 A I don't know if that's correct or not.

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1 Q I want to talk about that. What's a
 2 fiber year of asbestos exposure?

3 A That's being exposed to one fiber of
 4 asbestos for a year's time in the atmosphere.

5 Q How did you make that determination that
 6 he had 211 fiber-years exposure?

7 A It was done by classifying all of the jobs
 8 at the operation, and what the average exposure
 9 would be to these people at each one of their jobs.
 10 And these -- In the various jobs they had, there was
 11 the total of fiber exposure they would be exposed
 12 to over the time that they had worked at that job,
 13 and all of these would be -- would be added together
 14 and the total employment would be divided into that
 15 and that would give you the number of fiber years.

16 Q Who worked up that system of determining
 17 fiber years?

18 A It was done by statistician at McGill
 19 University.

20 Q But one could have 211 fiber years of
 21 exposure with only 30 years of work if the exposure
 22 was in a real bad place, right?

23 A Yes, sir.

24 Q And if one were in the old dry mill for,
 25 say, a year and a half or two years, one could have

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1 I don't know whether those ventilation shafts would
 2 become clogged.

3 Q The electricians had to work in the
 4 ventilation shafts; is that right?

5 A I'm sure they did at times, yes, sir.

6 Q Okay. Well, I'm just about done here,
 7 sir. I want to ask you a couple questions about the
 8 nature of the exposure up there at your W.R. Grace
 9 facility. Let's take your situation. How many
 10 years did you work up there?

11 A Thirty-five.

12 Q There were other men that worked up there
 13 for 35 years; is that correct?

14 A Yes, sir.

15 Q And some of them were exposed to asbestos
 16 for 35 years, right?

17 A Yes, sir, that's possible.

18 Q There is an interesting statement in
 19 Plaintiffs' Exhibit ZZ. And it talks about
 20 Mr. Gidley. And I don't want to get into the
 21 particulars of Mr. Gidley because that's really not
 22 relevant here, except that it says -- One thing, it
 23 says that, He had 211 fiber-years exposure to
 24 asbestos. Do you see that?

25 A Yes, sir.

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1 20 fiber years of exposure from just that short
 2 period of time; is that correct?

3 A You could put any number on there and it
 4 would be possible.

5 Q Okay. Did you keep fiber years of
 6 exposure for the employees right up until the end?

7 A No, sir.

8 Q That was something that was done early
 9 on?

10 A No, sir.

11 Q When was it done?

12 A It was done in 1983 and '84 as part of the
 13 McGill study.

14 Q The McGill study, did it include everybody
 15 that had ever worked there?

16 A No, sir.

17 Q Who did it include?

18 A It included -- They had what was known as
 19 a cohort list. There was four hundred and some
 20 employees on that. In order to be placed on the
 21 cohort list, it was somebody that had been hired in
 22 1963 or before and had worked one or more years at
 23 the operation.

24 Q So it excluded every employee who was
 25 hired after W.R. Grace acquired the mill; is that

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<p>1 correct?</p> <p>2 A Yes, sir.</p> <p>3 Q That would have excluded Dan Schnetter; is</p> <p>4 that correct?</p> <p>5 A Well, let me clarify that. He would have</p> <p>6 been excluded in the conclusions of the study, but</p> <p>7 his fiber years would have been calculated and part</p> <p>8 of -- it would have been part of the records. But</p> <p>9 he would not have been in the statistics that made</p> <p>10 up the study.</p> <p>11 Q All right. Couple more areas, then we're</p> <p>12 going to be finished here. Mr. Melcher was -- held</p> <p>13 the position of safety supervisor or trainer</p> <p>14 sometime in the '70s; is that correct?</p> <p>15 A Yes, sir.</p> <p>16 Q What was that position?</p> <p>17 A Well, he was -- After the MSHA law was</p> <p>18 passed that new miners were required to have</p> <p>19 training -- above-ground miners, 24 hours of</p> <p>20 training before they could go to work, and</p> <p>21 underground miners 40 hours before they were allowed</p> <p>22 to go to work, he was responsible for drawing up the</p> <p>23 training programs and administering these training</p> <p>24 programs to these employees and new hires. It was</p> <p>25 also a requirement that each employee would have</p>	<p>1 A Yes.</p> <p>2 Q You picked the kids who would be included</p> <p>3 in the cohort list?</p> <p>4 A Well, yes, sir.</p> <p>5 Q And not everybody who worked before 1963</p> <p>6 was included in the cohort list; is that correct?</p> <p>7 A If they worked a year or more, they were,</p> <p>8 yes, sir.</p> <p>9 Q Even the ones that couldn't be found?</p> <p>10 A They would have been on the cohort list,</p> <p>11 yes, sir.</p> <p>12 Q Okay. But this McGill study was dependent</p> <p>13 upon the accuracy of what you reported to some</p> <p>14 degree; is that true?</p> <p>15 A Yes, sir.</p> <p>16 Q And if what you reported was not accurate,</p> <p>17 then the study was flawed, correct?</p> <p>18 A Well, yes.</p> <p>19 (A discussion was held off the record.)</p> <p>20 MR. LEWIS: Exhibit 53.1, please.</p> <p>21 BY MR. LEWIS:</p> <p>22 Q Mr. Lovick, I'm handing you what has been</p> <p>23 marked as Exhibit 53.1. Have you seen that document</p> <p>24 before?</p> <p>25 A Yes, sir, I believe so.</p>
<p>Page 218</p> <p>1 eight hours of training each year and he was</p> <p>2 responsible for doing that training.</p> <p>3 Q When did the MSHA training requirements</p> <p>4 come into existence?</p> <p>5 A I don't remember.</p> <p>6 Q Was it 1979?</p> <p>7 A I don't remember.</p> <p>8 Q Okay. When Mr. Melcher retired, do you</p> <p>9 remember when that was?</p> <p>10 A No, sir.</p> <p>11 Q Do you know who took his place?</p> <p>12 A No, sir.</p> <p>13 Q Who would know that?</p> <p>14 A Mr. Melcher, I would assume.</p> <p>15 Q Did you ever attend any of Mr. Melcher's</p> <p>16 training sessions?</p> <p>17 A Yes, sir.</p> <p>18 Q Did you provide most of the data for the</p> <p>19 McGill study? You, personally?</p> <p>20 A I gathered the majority of the data, yes,</p> <p>21 sir.</p> <p>22 Q Nobody else provided any data for the</p> <p>23 McGill study besides you; is that true?</p> <p>24 A No, that would not be true.</p> <p>25 Q You gathered all the data?</p>	<p>Page 220</p> <p>1 Q Did you folks receive that in the regular</p> <p>2 and usual course of the business at W.R. Grace and</p> <p>3 Company?</p> <p>4 A Yes, sir.</p> <p>5 Q Is it a document that's regularly</p> <p>6 maintained in the records of W.R. Grace?</p> <p>7 A Yes, sir.</p> <p>8 MR. LEWIS: I move the admission of</p> <p>9 Exhibit 53.1, Your Honor.</p> <p>10 MR. GRAHAM: Just so that we're</p> <p>11 talking about the same thing, is that the Bureau of</p> <p>12 Mines -- or MSHA -- MESA report of October 2nd</p> <p>13 through 4th, 1973?</p> <p>14 MR. LEWIS: No, that's the October 2</p> <p>15 through 4, 1973.</p> <p>16 MR. GRAHAM: This one.</p> <p>17 MR. LEWIS: Right.</p> <p>18 MR. GRAHAM: No objection, Your</p> <p>19 Honor.</p> <p>20 THE COURT: G-53.1 will be admitted</p> <p>21 without objection.</p> <p>22 MR. LEWIS: Would you look at</p> <p>23 Exhibit 50? I think it's already in evidence.</p> <p>24 BY MR. LEWIS:</p> <p>25 Q Do you have Exhibit 50?</p>

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1 A Yes, sir.
 2 Q Were you folks issued a violation -- a
 3 notice violation as part of that report of May --
 4 excuse me, October 21, 1971?
 5 A We were issued a notice.
 6 Q Were you informed that asbestos fiber
 7 concentration in the dry mill and portions in the
 8 river transfer facilities exceeded the threshold
 9 limits for asbestos?
 10 A Yes, sir.
 11 Q And time allowed to abate this violation
 12 was to May 15, 1972; is that correct?
 13 A Yes, sir.
 14 MR. LEWIS: Now, I move the admission
 15 of G-53.1, Your Honor. It's in, I guess.
 16 MR. GRAHAM: That was already --
 17 THE COURT: That's already been
 18 admitted.
 19 MR. GRAHAM: -- been admitted.
 20 THE COURT: 53.1 has.
 21 MR. LEWIS: Is 50 in?
 22 THE COURT: 50 -- I don't have a
 23 record of 50.
 24 MR. GRAHAM: I believe --
 25 THE COURT: The clerk says she

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1 doesn't have a record of 50.
 2 BY MR. LEWIS:
 3 Q You have 50 in front of you; is that
 4 correct?
 5 A Yes, sir.
 6 Q And that was received by you folks and
 7 maintained in the regular course of your business
 8 activities?
 9 A Yes, sir.
 10 MR. LEWIS: Okay, offer G-50.
 11 MR. GRAHAM: No objection.
 12 THE COURT: 50 will be admitted
 13 without objection.
 14 BY MR. LEWIS:
 15 Q Now the notice violation that was to be
 16 abated in 1972 was not abated; is that correct?
 17 A I don't remember.
 18 Q Look at page 3 of Exhibit 53.1. Did --
 19 Does that state that asbestos fiber concentrations
 20 in the dry mill still exceeded the TLV's?
 21 A Yes, sir.
 22 MR. LEWIS: Your witness.
 23 (Whereupon, after a discussion at the
 24 bench, Court was adjourned for the day.)
 25

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<p>-\$-</p> <p>\$14,000 [1] 73:6 \$20,200 [1] 73:9 \$23,000 [1] 73:4 \$300 [4] 7:20,24 8:4,7 \$423,000 [1] 73:4</p> <p>-'</p> <p>' [2] 107:1 195:25 '50s [1] 34:2 '60s [2] 34:2 46:5 '61 [2] 15:19 16:1 '68 [2] 15:19 16:1 '70s [2] 34:3 217:14 '71 [2] 189:14 190:22 '72 [2] 16:7,15 '73 [1] 42:10 '74 [3] 42:11 203:3,5 '75 [1] 203:18 '76 [3] 75:5 203:16,18 '79 [1] 75:5 '80s [1] 34:3 '81 [2] 63:10 174:14 '84 [1] 216:12 'Dusts [1] 131:1 'expected' [1] 152:13 'extraordinarily' [1] 152:17 'interested' [1] 107:1 'Sixty-nine' [1] 168:22 'tremolite' [1] 195:25</p> <p>-0-</p> <p>0 [1] 195:15</p> <p>-1-</p> <p>1 [8] 37:18 41:14,14 93:25 94:6 131:25 133:16 195:15 1,000 [1] 25:1 1,100 [1] 25:6 1-5 [1] 40:17 10 [6] 37:18 54:16 75:19 76:24 88:10,12 10.1 [1] 69:16 100 [2] 208:24 213:1 1021 [1] 5:9 11 [2] 65:5,12 11th [1] 97:18 12 [2] 15:6 78:13 12th [1] 73:11 13 [2] 5:25 124:12 13.3 [1] 91:21 14 [1] 91:2 14th [1] 90:24 15 [7] 95:8 99:3,6,8 146:11 177:24 221:12</p>	<p>16 [6] 89:14 99:3,6,8 105:21 146:10 17 [1] 89:14 18 [3] 12:13 180:14 197:12 18-21 [1] 199:25 1828 [1] 2:10 19 [1] 168:20 1948 [1] 14:22 1950 [1] 5:11 1956 [9] 26:13,16 27:1,4 55:13 56:4 89:1,5 113:16 1959 [5] 65:6,12,15 113:23 146:9 1960s [1] 20:4 1961 [1] 14:22 1963 [5] 17:12 28:25 89:19 216:22 219:5 1964 [9] 67:9 90:25 91:2 92:16 95:10 97:18 101:19 105:21 109:22 1965 [16] 109:2,4,24 111:4,10 118:14 119:18 119:21 124:3,12,12 127:20 130:1,23 134:4 187:22 1966 [10] 145:6,25 146:11 147:13 150:17 152:22 153:14 155:5 160:3,13 1967 [5] 25:8,13,24 26:2 26:9 1968 [5] 15:18 17:23 73:11 78:13 197:12 1969 [13] 35:3 36:8 41:4 70:4 71:22 75:19,25 76:11 76:24 167:11,21 168:23 182:25 1970 [4] 44:24 76:17,20 185:22 1971 [16] 16:13 79:13,19 82:9 179:20 180:14 181:6 182:22 183:2,7 184:13 189:12 192:4 199:25 201:2 221:4</p> <p>1972 [10] 20:7 191:8,18 192:20 194:19 196:10,23 202:23 221:12 222:16 1973 [6] 12:12 82:12 156:9 168:9 220:13,15 1974 [6] 12:18 21:21,23 22:3 27:4 168:9 1975 [2] 109:4 203:16 1976 [2] 12:20 22:1 1977 [1] 76:8 1978 [3] 76:8 138:10,17 1979 [6] 16:13,19 52:15 52:16 189:20 218:6 1981 [7] 10:10 11:18 28:25 60:11,16 62:6 174:16 1982 [2] 140:6,19 1983 [13] 6:16,17,22,25 20:14 24:22 59:10 60:3 87:19 137:1,25 174:13</p> <p>216:12 1985 [1] 108:17 1990 [1] 19:6 1991 [1] 12:10 1996 [1] 168:20 1997 [1] 1:21 1:30 [1] 126:11</p> <p>2 [17] 41:13,14 65:14 92:16 108:17 111:10 112:21,22 122:20 124:3 131:1 133:21,24 187:22 195:7,13 220:14 2,500 [1] 23:4 20 [6] 65:15 126:11 140:6 140:19 172:25 216:1 20.1 [2] 110:24 111:2 20.2 [3] 124:6,9 125:18 20.3 [3] 126:21 128:23 129:3 20.4 [4] 128:23 129:22 186:21,25 20.5 [5] 128:24 129:2 186:22 187:13 188:14 21 [3] 38:9 184:13 221:4 211 [3] 214:23 215:6,20 22 [4] 34:8 37:16,21 38:10 22,000 [3] 42:4,11,14 23 [1] 146:9 2325 [1] 2:7 23rd [1] 19:6 24 [5] 35:3 36:8 144:3 183:17 217:19 25 [2] 144:4,7 26 [1] 165:7 29 [2] 1:21 145:25 29th [1] 145:6 2nd [2] 111:4 220:12</p> <p>3 [20] 36:25 37:12,13 39:21,23 40:6,8 41:8,10 41:11,17,18,21 42:18,19 71:22 98:11 167:11 183:1 222:18 3,000 [1] 23:5 30 [6] 10:10 11:17 12:10 147:13 172:25 215:21 30.1 [2] 197:7 198:23 31 [3] 10:10 150:17 179:20 31st [3] 79:13,19 138:17 35 [2] 214:13,16 3:00 [1] 177:25 3rd [2] 41:4 70:4</p> <p>4 [8] 41:13,14 122:19 123:3 201:6,16,20 220:15</p> <p>-2-</p>	<p>40 [3] 40:11 69:9 217:21 40.1 [5] 40:10,12 41:1 72:8 78:12 40.2 [3] 178:15,16,21 42 [4] 37:5,9 38:22 41:12 47 [3] 178:11 179:10,23 47.1 [2] 179:11,17 47.2 [3] 197:7 199:21 200:21 48 [1] 183:21 4th [1] 220:13</p> <p>-5-</p> <p>5 [9] 3:6 39:22 41:11 73:8 98:11 125:22 131:6 191:8 195:13 50 [11] 69:9 131:5 197:7 220:23,25 221:21,22,23 222:1,3,12 500 [6] 23:2,4,7,13,24 24:7 53 [1] 25:23 53.1 [5] 219:20,23 220:9 221:20 222:18 59403 [2] 2:8,10 59807-7909 [1] 2:14</p> <p>-6-</p> <p>6 [1] 202:10 60 [1] 69:9 600 [1] 42:22 61 [1] 137:14 660 [2] 42:21 43:22</p> <p>-7-</p> <p>7 [1] 160:13 71 [1] 12:2 72 [1] 12:2 7909 [1] 2:13 7th [1] 160:3</p> <p>-8-</p> <p>8 [2] 25:23 124:12 8-25-64 [1] 99:16</p> <p>-9-</p> <p>9 [2] 88:11 130:1 900 [1] 25:5 9:00 [1] 1:21</p> <p>-A-</p> <p>a.m [1] 1:21 abaited [1] 222:16 abate [1] 221:11 abated [1] 222:16 ability [1] 24:14 able [6] 43:14,18 95:3 120:11 175:1 186:1</p>
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